Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDL –S, MNDCL – S, FFL

Introduction

This decision deals with the landlord's application for a Monetary Order for damage to the rental unit; and, other damages or loss under the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing held on August 30, 2018. The hearing was adjourned due to time constraints and the parties were given the opportunity to provide their final arguments and submission by way of a written submission as seen in the Interim Decision I issued on August 30, 2018. The Interim Decision should be read in conjunction with this decision.

I have received a written submission from both parties and considered them in making this decision. Accordingly, both parties were provided the opportunity to be make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

The landlord initially applied for authorization to retain the tenant's security deposit; however, the security deposit has already been refunded, as seen in the Interim Decision issued on August 30, 2018. The landlord's application was amended accordingly.

Issue(s) to be Decided

Has the landlord established an entitlement to monetary compensation from the tenants, as claimed?

Background and Evidence

The tenancy started on September 1, 2015. The tenants were required to pay rent of $1,350.00 on the first day of every month. The fixed term tenancy was set to expire on July 31, 2017. The tenants vacated the rental unit at the end of June 2017.

The parties inspected the unit together at the start of the tenancy but the landlord did not prepare a move-in inspection report.

The parties did not inspect the unit together at the end of the tenancy. The landlord explained that was because the tenants moved out without notice. The tenants said it was because the landlord did not call them on July 31, 2017 as he said he would and then they received an email from the landlord saying he had already done the inspection on August 5, 2017.

Below, I have reproduced the landlord's claim of against the tenants for the following 12 items that totals $1,970.00:

1. Broken front door: $600
2. Broken toilet cover: $60
3. Ripped sliding window: $100
4. Missing closet guiding wheel: $40
5. Broken blinds: $40
6. Closet door damage: $80
7. Missing closet handle: $30
8. Irremovable carpet stains: $180
9. Curtain damage: $50
10. Broken fireplace set: $50
11. Two sets of locks $90. He hadn't returned me the keys, so I had to change the two sets of locks (front door and back door)
12. Breaching agreement $650. The agreement is an annual agreement that states the tenant will pay a penalty of $650 if moving out before the termination date.

The landlord provided photographs in an attempt to demonstrate the damage or missing items described above. However, the landlord did not provide any receipts, invoices, estimate, price lists, or the like to verify the amounts claimed with the exception of item #12. Rather, the landlord stated the claims were based on an oral estimates or past experience, purchases he made for which he neglected to submit the receipt, or he had not performed the repair yet. The landlord relied upon the tenancy agreement to support the amount claimed for item #12.

The tenants submitted that the rental unit had pre-existing damage and there were carpet stains when their tenancy started. The tenants submitted the house was older and many of the repairs that were needed at the end of the tenancy due to pre-exiting condition, age, and wear and tear. The tenants also questioned the values the landlord assigned to each repair issue, claiming they went to home improvement stores and located similar items for much less.

The tenants were agreeable to compensating the landlord for the following items:

- The tenant acknowledged the toilet seat lid nut was loose and then it broke. The tenant was agreeable to compensating the landlord $10.00 for a nut but not a new toilet seat.

- The tenant acknowledged two tears in the window screen but stated one was pre-existing and one was caused by their children but the tenants consider that to be wear and tear. The tenant was of the view the landlord's claim of $100 was excessive and the tenant was agreeable to compensating the landlord $10.00.

- The tenant was of the view the landlord's claim of $40.00 for a new blind was unreasonable when the bend was minor and the blinds still worked. The tenant was agreeable to compensating the landlord $10.00 for the bent blind.

The tenant acknowledged that the tenants still had the keys to the rental unit; however, the tenants explained that the landlord told them to bring him the keys if they also brought him $1,125.00. Since the tenants did not agree that they owed the landlord $1,125.00 they did not meet.

I also heard consistent testimony that the landlord actually resided at the rental unit during the summer of 2016. According to the tenants, as the tenancy was nearing an end in 2017 the landlord told the tenants he would be staying at the rental unit against in the summer of 2017 and re-doing the hardwood floors. As a result, the landlord was agreeable to the tenants leaving early. The landlord responded by stating that his family members were pressuring him to get rid of the tenants.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

As the applicant, the landlord bears the burden to prove his claims against the tenants. The burden of proof is based on the balance of probabilities. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

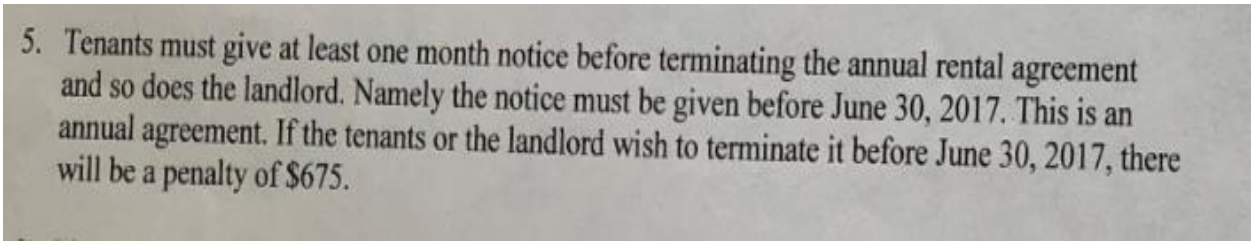
Section 32 of the Act provides that a tenant is required to repair damage caused to the rental unit or residential property by their actions or neglect, or those of persons permitted on the property by the tenant. Section 37 of the Act requires the tenant to leave the rental unit undamaged at the end of the tenancy. However, sections 32 and 37 provide that reasonable wear and tear is not considered damage. Accordingly, a landlord may pursue a tenant for damage caused by the tenant or a person permitted on the property by the tenant due to their actions or neglect, but a landlord may not pursue a tenant for reasonable wear and tear or pre-existing damage.

Also of consideration is that awards for damages are intended to be restorative. Where a fixture, appliance or other building element is so damaged it requires replacement, it is often appropriate to reduce the replacement cost by the depreciation of the original item.

In this case, the parties were in dispute as to whether items in need of repair at the end of the tenancy were damaged prior to the start of the tenancy. The landlord did not prepare a condition inspection report or present photographs of the rental unit at the start of the tenancy to demonstrate the condition of the rental unit at the start of the tenancy. Also, the rental unit appears as though it has older elements and it appears

the landlord has not taken into account that elements of a building will require repair and/or replacement due to aging and ordinary wear and tear. Finally, the landlord did not present any receipts, invoices, written estimates, price lists or the like to verify the amounts claimed against the tenants for damage. All these things considered, I find the landlord did not meet his burden to prove the tenants are responsible to compensate him the amounts claimed for repairs and replacement locks. Therefore, I grant the landlord compensation based on the tenant's agreement to pay the landlord the sum of $30.00 for the items the tenant acknowledged during the hearing and I dismiss the balance of the amounts claimed for items 1 through 11 of the landlord's list of claims.

With respect the landlord's claim for breaching the fixed term tenancy agreement, I provide the following findings. The landlord relies upon a term in the tenancy agreement as the basis for claiming compensation of $675.00 for breach of the fixed term tenancy agreement. Below, I have reproduced the applicable term:



5. Tenants must give at least one month notice before terminating the annual rental agreement and so does the landlord. Namely the notice must be given before June 30, 2017. This is an annual agreement. If the tenants or the landlord wish to terminate it before June 30, 2017, there will be a penalty of $675.

As stated previously, awards are intended to be restorative, not punitive. The Act does not permit a party to charge the other party with a penalty.

Parties may agree at the start of a tenancy to "liquidated damages" in the event the tenant ends a fixed term tenancy early. Liquidated damages are provided in Residential Tenancy Policy Guideline 4: *Liquidated Damages*. The policy guideline provides, in part:

> A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable. In considering whether the sum is a penalty or liquidated damages, an arbitrator will consider the circumstances at the time the contract was entered into.
>
> There are a number of tests to determine if a clause is a penalty clause or a liquidated damages clause. These include:

- A sum is a penalty if it is extravagant in comparison to the greatest loss that could follow a breach.
- If an agreement is to pay money and a failure to pay requires that a greater amount be paid, the greater amount is a penalty.
- If a single lump sum is to be paid on occurrence of several events, some trivial some serious, there is a presumption that the sum is a penalty.

[My emphasis underlined]

In term 5 of the tenancy agreement, and in making the claim against the tenants, the landlord characterized the $675.00 claim as being a penalty. Therefore, I find the term is unenforceable and I dismiss this component of the landlord's claim against the tenants.

I make no award for recovery of the filing fee as the landlord had very limited success in this application and I am of the view this dispute may have been avoided had the landlord been more reasonable in his claims against the tenants.

Conclusion

The landlord is awarded $30.00 and the balance of the landlord's claim against the tenants has been dismissed.

The security deposit has already been refunded to the tenants. Therefore, I make no further order with this decision.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: October 31, 2018

Residential Tenancy Branch